SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

October Term, 1970

No. 1202

THE BOARD OF TRUSTEES OF THE SOCIAL SECURITY FUND OF THE DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS INTERNATIONAL UNION OF AMERICA, AFL-CIO,

Petitioner,

v.

FRANK J. FARRELL,

Respondent.

BRIEF CONTRA TO PETITION FOR A WRIT OF CERTIORARI

SNYDER & LOWENSCHUSS

FRED LOWENSCHUSS
EDWARD M. SNYDER
Attorneys for Respondent

Suite 811
121 S. Broad Street
Philadelphia, Pennsylvania 19107

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BRIEF CONTRA TO PETITION FOR WRIT OF CERTIORARI

Counterstatement of the Case

A. Factual Background

On December 9, 1963, Frank J. Farrell suffered serious and permanent injuries, including brain damage, paralysis, and industrial loss of use of both eyes, which have permanently disabled him to date. At the time of the accident, Frank J. Farrell was covered under a Health and Accident policy issued by the Board of Trustees of the Social Security Fund of Distillery, Rectifying, Wine and Allied Workers' International Union of America, AFL-CIO, hereinafter referred to as "Social Security Fund".

The Social Security Fund investigated the claim presented by Frank J. Farrell and determined that it was a valid claim, and in fact forwarded several benefit checks to Frank J. Farrell (R122a-123a). Thereafter, for no valid reason, the Social Security Fund refused to pay to Frank J. Farrell what was rightfully due him under the provisions of the Health and Accident policy issued to him.

It should be noted that all contact between Social Security Fund and Frank J. Farrell and in fact all other policyholders and/or beneficiaries under the Social Security Fund Health and Accident policies was made at and through an office located in Room 918 Bankers Securities Bldg., Juniper and Walnut Sts., in the County of Phila., Commonwealth of Penna. The Social Security Fund had its "Welfare Representative", one Harry Newman, work out of the office at Room 918

Bankers Securities Bldg., Philadelphia, Pa., where all the claims were made, handled, forwarded, and checks issued and received. Said Harry Newman was employed and paid by the Social Security Fund for his handling of the Funds' matters in the Philadelphia area. It is important to note that the duties of the Welfare Representative, Harry Newman, were in actuality carried out by Samuel Jacobs and Angie DeAngelo, and the records of the Social Security Fund were kept by Miss DeAngelo at 918 Bankers Securities Bldg. office.

On January 9, 1968, legal action was instituted on behalf of Frank J. Farrell against the Social Security Fund in the Common Pleas Court of Philadelphia. On February 2, 1968, the Sheriff of Philadelphia County properly served the Social Security Fund at the office in which the Fund conducts its business in Philadelphia and where the Funds' records were kept by Angie DeAngelo, by serving a copy of the Complaint on Miss DeAngelo, who was the only person in the said office, and the person that was in charge of said office at the time. On the same day, February 2, 1968, Samuel Jacobs and Angie DeAngelo forwarded the Complaint filed in this action to the home office of the Fund (R132a). Irving Sklansky, Manager of the Social Security Fund at the home office, received the Complaint filed in this action in early February 1968 on behalf of the Fund (R187a). Thereafter, there were numerous telephone conversations and letters between Irving Sklansky, Manager of the Fund at the home office, and Fred Lowenschuss, Esq., attorney for Frank J. Farrell (R188a-196a, 239a-243a).

On January 16, 1968 Fred Lowenschuss, Esquire spoke with Irving Sklansky and informed him of the suit which was instituted in the Common Pleas Court of Philadelphia County, January Term, 1968, No. 598. Mr. Sklansky requested an extension of time in which to defend the action in order to work out a voluntary payment on behalf of the fund, or, in the alternative, to have the matter submitted to Arbitration. Mr. Lowenschuss wrote to Mr. Sklansky on January 16, 1968 confirming the telephone conversation (R239a). On February 7, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky requesting information concerning Mr. Farrell's claim (R240a). On February 27, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky giving the Fund twenty (20) days in which to defend the action pending in the Common Pleas Court of Philadelphia County, January Term, 1968, No. 598 (R42a, 241a). On March 19, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky sending him the report of Mr. Farrell's doctor stating that he had been permanently disabled since the accident on December 9, 1963 and again requesting payment under the policy (R44a). On March 29, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky requesting that Mr. Sklansky advise him what arrangements are being made to pay the claim of Mr. Farrell (R47a). On April 9, 1968 Mr. Lowenschuss again wrote to Mr. Sklansky giving him ten (10) days in which to have his attorneys enter their appearance and defend the case pending in the Court of Common Pleas of Philadelphia County, January Term, 1968, No. 598, and that failure to do so would result in judgment being entered against the defendant and execution issued (R47a, 48a).

It was not until April 30, 1968 (21 days later) that judgment was entered in favor of the plaintiff and against the defendant. Mr. Lowenschuss wrote to Mr. Sklansky on May 1, 1968 advising him of the entry of judgment and requesting arrangements be made within one week to pay off the judgment of $18,118.49 (R243a).

It is important to note that in all proceedings in the Lower Court and in the Pennsylvania Supreme Court, no constitutional or federal question was ever raised by the Social Security Fund.

Questions Presented

A. CAN A FEDERAL OR CONSTITUTIONAL QUESTION BE RAISED FOR THE FIRST TIME IN THE UNITED STATES SUPREME COURT IN A CASE OF THIS NATURE?

B. WAS THERE A VIOLATION OF DUE PROCESS?

Reasons for Denying the Writ

A. THE SOCIAL SECURITY FUND NEVER RAISED A FEDERAL OR CONSTITUTIONAL QUESTION AND/OR CLAIMED A DENIAL OF DUE PROCESS IN ANY OF THE STATE COURT PROCEEDINGS.

B. THE REQUIREMENT OF DUE PROCESS IS "NOTICE AND OPPORTUNITY TO BE HEARD."

The Social Security Fund admits receiving the suit papers and Complaint filed in this case, and in fact requested a reasonable extension of time

in order to either make a voluntary payment or in the alternative to submit the matter to arbitration. There were numerous phone calls and letters exchanged between counsel for Frank J. Farrell and the Manager of the Social Security Fund. The Social Security Fund had ample notice and more than 90 days in which time to defend this action. They had over four years in which time to investigate this matter and determine the validity of the claim. In fact they did determine that Frank J. Farrell had a valid claim and was entitled to collect under the provisions of the Fund.

Conclusion

The Social Security Fund through its' attorneys in its' Brief on page 7 have admitted that throughout the proceedings in the State Court, they have failed to raise any constitutional question and/or federal question and/or objection to "due process." Furthermore, "due process" was rigidly adhered to in this case, and the Social Security Fund had complete and full notice of the claim against it and more than ample opportunity to defend the action and/or to come in and be heard. Furthermore, the Social Security Fund has acknowledged that the Claim of Frank J. Farrell is valid and that in actuality the Social Security Fund has no defense to said claim.

The Petition for Certiorari should be denied with costs and counsel fees and expenses assessed against the Social Security Fund.

Respectfully submitted,

s/ Fred Lowenschuss
s/ Edward M. Snyder
Attorneys for Respondent

Snyder & Lowenschuss
On the Brief